IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1809 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGWATIBEN J SHARAF

Versus

DIST PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 1809 of 2001

MR NALIN K THAKKER for Petitioner No. 1

MR RA MISHRA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 19/03/2004

ORAL JUDGEMENT

The present Special Civil Application is filed by the petitioner, who was serving as primary teacher under the District Primary Education Officer, District

Education Committee, District Panchayat, Junagadh. The petitioner has challenged the legality and validity of the impugned orders dated 15.07.2000 and 12.01.2001 (Annexures 'C' and 'I' respectively). By order dated 15.07.2000, Annexure 'C' to the petition, the petitioner was ordered to be retired on compensatory pension, with effect from 31.07.2000. Against this order dated 15.07.2000, the petitioner made representation dated 16.08.2000 requesting that as the petitioner has put in 24 years and 9 months of service and if she was allowed to retire at the end of the academic term, she would have completed 25 years of service and on so completion of 25 years of service she would have got the benefit of addition of 5 years for calculation of pensionable service. She requested for the said benefit by the said representation. As she did not hear anything from the authorities she made another representation dated 10.10.2000. May be that the petitioner was little impatient, she again made a representation dated 20.10.2000. The next representation submitted by her to the authorities was dated 12.12.2000. Thereafter, one more representation she made on 29.12.2000. The authorities replied to the last representation of the petitioner dated 29.12.2000 by letter dated 12.01.2001, a copy of which is at Annexure 'I', which is under challenge in this petition. By the said communication the petitioner was conveyed that by order dated 15.07.2000 you are already retired on compensatory pension and that order is final and there is no question of your reinstatement in service. Therefore, the petitioner should not indulge in any unnecessary correspondence and pension papers be prepared and submitted through Taluka Development Officer, Vanthali within eight days from the date of receipt of the said communication. Surprisingly, the authorities mentioned in that letter/ communication that, 'in case the petitioner fails to do so, it will be presumed that the petitioner is not willing to accept the pension. The stand taken by the authorities is too harsh by any standards and therefore, the petitioner is before this Court being aggrieved of both these orders dated 15.07.2000 and 12.01.2001.

2. The facts of the case are that the petitioner was appointed in the year 1975 as primary teacher in Sindhi Medium School on a large scale migration of Sindhi speaking people in Junagadh district, Sindhi Medium Schools were opened in Junagadh, Veraval, Bantva, Manavdar, Vanthali, Keshod and other places. By passage of time strength of students taking instructions in Sindhi Medium Schools got reduced and therefore, some of

the schools were required to be closed down. Therefore, the authorities by communication dated 08.03.2000 (Annexure 'A') asked the petitioner, along with many other similar Sindhi Medium Primary Teachers, either to accept assignments in Gujarati Medium Schools or to accept cessation of their services. Options were invited. The petitioner also exercised her option, but the authorities came to the conclusion that the petitioner was not competent to work in Gujarati Medium School and that the petitioner had not given her consent to be allotted to a Gujarati Medium School. The communication dated 08.03.2000 of the District Primary Education Officer was replied by the petitioner by her letter dated 27.03.2000 controverting both these averments, namely, she is not competent to work in a Gujarati Medium School and that she has not given her consent to be allotted to a Gujarati Medium School. The said reply was not accepted and the impugned order dated 15.07.2000 was passed.

3. The learned advocate for the petitioner submitted that other similarly situated persons had approached this Court by filing Special Civil Application No.8112 to 8115 of 2000 challenging an order similar to the impugned order dated 15.07.2000. These matters were disposed of on a statement being made which is recorded in judgement and order dated 27.07.2000, which reads as under:

> "However, Mr.Desai states that each of the petitioners herein is agreeable to serve in Gujarati medium school if they are so accommodated. He also agrees that the petitioners shall report for duty immediately on posting orders being issued by the District Primary Education Officer without any challenge to such transfer or posting. Mr.Popat, the learned advocate, on instructions from the District Primary Education Officer who is present in the court, states that if the petitioners are willing to serve in Gujarati medium schools, the said officer shall accommodate the petitioners in Gujarati medium schools and shall withdraw the impugned order dated 15th July 2000 and shall also issue the posting order on or before 31st July 2000."

4. This Court taking into consideration the aforesaid statement passed the following order:

> "In view of the aforesaid statements made by the learned advocates, it is directed that (a) the

District Primary Education Officer shall on or before 31st July 2000 withdraw the impugned orders dated 15th July 2000, (b) the District Primary Education Officer shall make the orders of transfer of the petitioners to the Gujarati medium schools and shall issue necessary posting orders within the District on or before 31st July 2000, (c) the petitioners shall receive the orders which may be made in respect of their transfer and posting and shall report for duty at the place of posting on 1st August 2000. The order of posting shall be final. It shall not give a fresh cause of action to the petitioners."

5. The learned advocate for the petitioner submitted that, the petitioner ought to have been accorded a similar treatment. In reply to this, Mr.R.A. Mishra, the learned advocate appearing for respondent no.1 submitted that in fact the petitioner was accorded a similar treatment, but then as she insisted that she should be given posting only at Vanthali, where she was working in a Sindhi Medium School, directions of this Court could not be implemented in her case and that is why she stood retired on compensatory pension, which ultimately gave cause to issue communication dated 12.01.2001.

6. This being the only controversy, without going into the question as to who was at fault, taking into consideration the facts and circumstances of the case it is deemed fit that the interest of justice will be served, if the request made by the petitioner is accepted. In her representation dated 16.08.2000 the petitioner had requested that as she had completed 24 years and 9 months of service, she should be allowed to retire, on her completing 25 years of service.

This order is passed in the peculiar facts and circumstances of this case. Taking into consideration the fact that a lady teacher who served since 1975, without there being anything on record to show that her services were not satisfactory in any manner. It is her ill luck that strength of students taking instructions in Sindhi Medium got reduced, whereby schools of Sindhi Medium were required to be closed. At the fag end of her career and at this advanced age, a lady teacher is to have number of social obligations to be discharged of which a judicial notice can be taken. Therefore, it may not be possible for the petitioner to accept a posting outside the place where she was working for all these years. The authorities could have and in fact, should

have accommodated her by giving her a posting in Gujarati Medium School at Vanthali itself. But then it is too late to go into all these questions now. Therefore, it is thought fit and proper to issue the following directions.

The authorities are hereby directed,

(i) to consider the case of the petitioner as if she has completed 25 years of service and on that basis she should be granted the benefits of relevant provisions applicable to her case, allowing her to retire voluntarily.

(ii) According to Mr.Thakkar, the learned advocate for the petitioner the provisions of Rule 251(2) read with Rule 254 (1) of the Bombay Civil Services Rules, 1959 are applicable to the petitioner under which she is required to be given benefits. It is, therefore, directed that the authorities shall give all benefits to the petitioner accordingly.

7. Mr.Thakkar, the learned advocate at this juncture submitted that since the order dated 15.07.2000 by which the petitioner is retired on compensatory pension with effect from 31.07.2000 has remained without pension, therefore, he requests that the authorities be directed to comply with the aforesaid directions within reasonable time. The request is reasonable. The same is granted. The authorities are directed to comply with the above directions within eight weeks from the date of receipt of writ of this Court.

8. With the aforesaid directions this petition is disposed of. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)
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